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FIRST GENERAL COUNSEL'S REPORT CELA

MUR 6439

DATE COMPLAINT RECEIVED: 12/6/2010

DATE OF NOTIFICATIONS: 12/13/2010

LAST RESPONSE RECEIVED: 02/07/2011

DATE ACTIVATED: 02/23/2011

EXPIRATION OF SOL: 10/18 – 11/03/2015

COMPLAINANT:

Connecticut Democratic State Central Committee
and Nancy DiNardo, State Chair

RESPONDENTS:

Linda McMahon for Senate 2010 and Rob Jentgens,
in his official capacity as treasurer

World Wrestling Entertainment, Inc.

Linda McMahon

Vince McMahon

RELEVANT STATUTES
AND REGULATIONS:

2 U.S.C. § 434(f)

2 U.S.C. § 441b(a)

2 U.S.C. § 441d

11 C.F.R. § 109.20

11 C.F.R. § 109.21

11 C.F.R. § 110.11

INTERNAL REPORTS CHECKED:

FEC Database

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

This matter involves allegations that World Wrestling Entertainment, Inc. ("WWE") and its Chief Executive Officer ("CEO"), Vince McMahon ("Mr. McMahon"), made prohibited corporate in-kind contributions to Connecticut Republican Senate candidate Linda McMahon ("Mrs. McMahon" or the "Candidate") and her principal campaign committee, Linda McMahon

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1 for Senate 2010 and Rob Jentgens, in his official capacity as treasurer ("Committee"). The
2 complaint alleges that WWE coordinated various expenditures for corporate promotional
3 activities and communications with the Candidate and the Committee. The Respondents deny
4 that there was any type of coordination between WWE and Mrs. McMahon and the Committee.

5 As explained below, we recommend that the Commission 1) find no reason to believe
6 that World Wrestling Entertainment, Inc., Vince McMahon, Linda McMahon, and Linda
7 McMahon for Senate 2010 and Rob Jentgens, in his official capacity as treasurer, violated
8 2 U.S.C. § 441b(a) by making or accepting prohibited corporate in-kind contributions in the form
9 of coordinated expenditures; and 2) dismiss, as a matter of prosecutorial discretion, violations of
10 2 U.S.C. §§ 434(f) and 441d stemming from WWE's failure to disclose or include a disclaimer
11 on its Make-A-Wish advertisement that qualified as an electioneering communication.

12 **II. FACTUAL BACKGROUND**

13 WWE is a publicly traded, privately-controlled, sports entertainment corporation dealing
14 primarily with professional wrestling with major revenue sources also coming from film, music,
15 product licensing, and direct product sales.¹ Its corporate headquarters are located in Stamford,
16 Connecticut. Its revenue for fiscal year 2010 is reported to have been \$477.7 million. *Id.* Vince
17 McMahon is the current CEO of WWE and owns approximately 88% of the total voting powers
18 of all outstanding shares of WWE. WWE Response, McMahon Affidavit at ¶ 3. Between 1980
19 and 2009, Mr. McMahon's spouse, Linda McMahon, served as the CEO of WWE. Committee
20 Response at 2.

21 Linda McMahon was the 2010 Republican nominee for U.S. Senator in Connecticut.
22 Linda McMahon for Senate 2010 was her principal campaign committee, and Rob Jentgens is
23 the current treasurer of the Committee. Upon filing a Statement of Candidacy for the 2010

¹ See <http://www.corporate.wwe.com/company/financials.jsp>.

1 Connecticut Senate race on September 16, 2009, Mrs. McMahon resigned as CEO of WWE, and
2 on November 6, 2009, she resigned from the WWE's Board of Directors. McMahon Affidavit at
3 ¶ 4. Mrs. McMahon currently owns approximately 1.2% of the outstanding voting shares in
4 WWE.² WWE Response, McMahon Affidavit at ¶ 3. The Committee did not report receiving
5 any contributions from WWE during the primary or general election cycles.

6 The complaint alleges that the following WWE activities constitute prohibited corporate
7 in-kind contributions to Mrs. McMahon and her committee:

- 8 • In October 2010, WWE launched a public relations campaign called "Stand Up
9 for WWE" to respond to what it characterized as inaccurate statements made
10 about WWE in the context of Mrs. McMahon's political campaign. WWE
11 encouraged fans to use social media outlets to "correct biased and inaccurate
12 media reports." Complaint at 2.
- 13 • In conjunction with its October 2010 public relations campaign, WWE
14 sponsored a statewide television advertisement extolling its work with the
15 Make-A-Wish Foundation. Complainant alleges that the television
16 advertisement prominently included a likeness of Linda McMahon.
17 Complaint at 2.
- 18 • WWE's October 30, 2010, "Fan Appreciation Day" took place in Hartford,
19 Connecticut. Complainant alleges this event was a "thinly veiled attempt to
20 rally support for Linda McMahon's candidacy less than 72 hours before
21 election day." Complaint at 3.
- 22 • WWE scheduled a taping of its "Smackdown" Program in the "heart of the
23 heavily Democratic city of Bridgeport on election night." Complainant
24 alleges this event was geared towards suppressing voter turnout in the highly
25 Democratic urban area. Complaint at 3.

26 Responses were filed on behalf of Mr. McMahon and WWE ("WWE Response") and
27 Mrs. McMahon and the Committee ("Committee Response"). Both responses deny any
28 coordination of the WWE corporate promotional activities and communications. The WWE
29
30
31
32

² Mrs. McMahon's minimal stock ownership does not change any of the conclusions in this Report.

Response includes detailed affidavits from Mr. McMahon and another WWE official, Michelle Wilson.

III. LEGAL ANALYSIS

A. Prohibited Corporate In-Kind Contributions

The complaint alleges that WWE made prohibited corporate in-kind contributions as a result of coordinating some or all of its Fall 2010 promotional activities and communications with Mrs. McMahon and the Committee. Complainant contends that "Linda McMahon maintains a close personal, familial, and financial connection to WWE, and is relying upon the resources of that company to advance her campaign in an apparently coordinated manner." Complaint at 3. The Respondents deny that they engaged in any type of coordination or that any of the communications satisfy the content or conduct prongs of the coordination regulations. The Committee further contends that WWE's corporate promotional activities and communications are not subject to the general coordination provision of 11 C.F.R. § 109.20(b) because the expenditures were not made for the purpose of influencing a federal election, but were "bona fide" corporate programs designed to defend WWE and promote its corporate image, and they were not coordinated with Linda McMahon or her campaign. Committee Response at 19.

The Federal Election Campaign Act of 1971, as amended ("the Act") prohibits corporations from making contributions from their general treasury funds in connection with any election of any candidate for federal office. 2 U.S.C. § 441b(a).³ Further, no candidate or political committee may knowingly accept a corporate contribution. *Id.* A coordinated

³ However, the Supreme Court concluded in *Citizens United* that corporations, subject to reporting and disclaimer requirements, may use their general treasury funds to make independent expenditures and electioneering communications. *Citizens United v. FEC*, 558 U.S. ___, 130 S.Ct. 876, 913 (2010). WWE did not report making any independent expenditures or electioneering communications in 2010.

1 communication is treated as an in-kind contribution to the candidate, authorized committee, or
2 political party committee with whom it is coordinated and must be reported as an expenditure
3 made by that candidate, authorized committee, or political party committee. 2 U.S.C.
4 §§ 441a(a)(7)(B)(i); 11 C.F.R. § 109.21(b)(1). A communication is coordinated with a
5 candidate, an authorized committee, a political party committee, or an agent of any of the
6 foregoing when the communication 1) is paid for, in whole or part, by a person other than that
7 candidate, authorized committee, political party committee, or agent, 2) satisfies at least one of
8 the content standards described in 11 C.F.R. § 109.21(c),⁴ and 3) satisfies at least one of the
9 conduct standards described in 11 C.F.R. § 109.21(d).⁵

10 The content prong can be satisfied by any one of the following types of content:

- 11 • A public communication that is an electioneering communication under
12 11 C.F.R. § 100.29. 11 C.F.R. § 109.21(c)(1). An electioneering
13 communication is any broadcast, cable, or satellite communication that
14 refers to a clearly identified federal candidate, is publicly distributed within
15 60 days before a general election or 30 days before a primary election, and
16 is targeted to the relevant electorate. 11 C.F.R. § 100.29.
17
- 18 • A public communication, as described in 11 C.F.R. § 100.26, that disseminates,
19 distributes, or republishes, in whole or in part, campaign materials prepared by
20 a candidate or the candidate's authorized committee, unless the dissemination,
21 distribution, or republication is excepted under 11 C.F.R. § 109.23(b). 11 C.F.R.
22 § 109.21(c)(2).
23

⁴ The Commission recently revised the content standard in 11 C.F.R. § 109.21(c) in response to the D.C. Circuit's decision in *Shays v. FEC*, 528 F.3d 914 (D.C. Cir. 2008). The Commission added a new standard to the content prong of the coordinated communications rule. 11 C.F.R. § 109.21(c)(5) covers communications that are the functional equivalent of express advocacy. See Explanation and Justification for *Coordinated Communications*, 75 Fed. Reg. 55,947 (Sept. 15, 2010). The effective date of the new content standard is December 1, 2010, after the events at issue in this matter. The new standard would not change the analysis in this Report.

⁵ Although Complainant alleges coordination under section 109.21, it is possible to have a coordinated expenditure that is not made for communications. 11 C.F.R. § 109.20(b); see also Explanation and Justification, *Coordinated and Independent Expenditures*, 68 Fed. Reg. 421, 425 (Jan. 3, 2003) (11 C.F.R. § 109.20(b) addresses expenditures that are not made for communications, but that are coordinated with a candidate, authorized committee or political party committee).

- A public communication that expressly advocates, as defined by 11 C.F.R. § 109.22, the election or defeat of a clearly identified federal candidate. 11 C.F.R. § 109.21(c)(3).
- A public communication that, in relevant part, refers to a clearly identified Senate candidate and is distributed within the candidate's jurisdiction within 90 days of the general election. 11 C.F.R. § 109.21(c)(4).

The conduct prong can be satisfied by one of the following six standards set forth in

11 C.F.R. § 109.21(d)(1)-(6):

- A communication created, produced, or distributed at the request or suggestion of a candidate, authorized committee, or political party committee; or a communication created, produced, or distributed at the suggestion of a person paying for the communication and the candidate, authorized committee, or political party committee assents to such suggestion. 11 C.F.R. § 109.21(d)(1).
- A communication where the candidate, authorized committee, or political party committee is materially involved in decisions regarding 1) the communication's content, 2) the intended audience for the communication, 3) the means or mode of the communication, 4) the specific media outlet for the communication, 5) the timing or frequency of the communication, or 6) the size or prominence of the printed communication or the duration by broadcast, satellite, or cable. 11 C.F.R. § 109.21(d)(2). A candidate or authorized committee's activity rises to the material involvement level only after sharing material "information about plans, projects, activities, or needs with the person making the communication." See *Explanation and Justification for Coordinated and Independent Expenditures*, 68 Fed. Reg. 421, 434 (January 3, 2003).
- A communication created, produced, or distributed after there are one or more discussions about the communication between the candidate or his/her committee and the person paying for the communication during which substantial information about the candidate's or political party committee's campaign plans, projects, activities, or needs is conveyed to the person paying for the communication, and that information is material to the creation, production, or distribution of the communication. 11 C.F.R. § 109.21(d)(3).
- A communication created, produced, or distributed using the services of a commercial vendor who had access to certain types of information as a result of providing services to a candidate, the candidate's opponent, their authorized committees, or a political party committee. 11 C.F.R. § 109.21(d)(4).
- A communication is created, produced, or distributed using the services of a person who was an employee or independent contractor of a candidate, the candidate's opponent, their authorized committees, or a political party committee

1 during the 120 days prior to production of the communication. 11 C.F.R.
2 § 109.21(d)(5).

- 3
4 • A communication which satisfies the content prong and disseminates, distributes,
5 or republishes the candidate's campaign materials. 11 C.F.R. § 109.21(d)(6).
6

7 As set forth below, it appears that none of the WWE activities meet all three prongs of
8 the coordinated communication regulations. Although the payment prong is satisfied for each of
9 the WWE activities, the content prong appears to be satisfied as to only one of the
10 communications, the *WrestleMania* television advertisement. Further, the Response fully rebut
11 the complaint's speculative assertions as to the conduct prong being satisfied as to any of the
12 WWE activities.

13 1. "Stand Up for WWE" promotional campaign

14 In October 2010, WWE launched a public relations campaign called "Stand Up for
15 WWE" to protect its business interests and reputation from the negative media attacks in
16 connection with Mrs. McMahon's candidacy. WWE Response at 6. WWE states that it posted
17 numerous videos on its website designed to give a more balanced presentation of WWE, and
18 used social media networks (YouTube, Facebook, Twitter) to address the issues raised by the
19 negative attacks directed at WWE. *Id.* at 6, 8-10; *see also* Exhibits F and N. Complainant
20 alleges that "it is inescapable that this major, comprehensive, and public effort aimed directly
21 at those news organizations currently covering the election was not undertaken in coordination
22 with Linda McMahon's Senate campaign." Complaint at 2. In response, WWE states that Mr.
23 McMahon, without the involvement of Mrs. McMahon, asked fans to "join us in responding to
24 these malicious attacks against our company and you, our viewers."⁶ WWE Response at 10,
25 McMahon Affidavit at ¶¶ 7-11 and Wilson Affidavit at ¶ 25.

⁶ See Press Release, World Wrestling Entertainment, Inc., Fans Stand Up for WWE, October 18, 2010, available at http://corporate.wwe.com/news/2010/2010_10_18.jsp (last accessed May 17, 2011).

1 Respondents assert that much of the content in the "Stand Up for WWE" promotional
2 program does not constitute public communications, and the limited amount which would
3 qualify does not satisfy the content prong of the coordination regulations. Committee Response
4 at 8; WWE Response at 16. Respondents contend that since most of the promotional activities,
5 including the web videos, were placed on WWE's website and other websites at no cost, they are
6 exempted from the Commission's definition of "public communication." 11 C.F.R. § 100.26.
7 WWE concedes that a "few" of the hundreds of "Stand Up for WWE" communications were
8 placed on other websites for a fee, and some of the web videos were ultimately aired during
9 certain telecasts of WWE corporate programming. WWE Response at 16. In particular, WWE
10 placed, for a fee, on People.com and TMZ.com, the "Celebrities Discuss Experiencing the Power
11 of WWE" communication.⁷ While Respondents concede that such communications are public
12 communications, they still do not satisfy the content prong because none of these videos
13 referenced Mrs. McMahon or another clearly identified federal candidate. Committee Response
14 at 16, n. 13; 11 C.F.R. § 109.21(c). Available information indicates that these "Internet only
15 communications" do not satisfy the content standards pertaining to public communications
16 because they do not refer to any clearly identified federal candidate. See 11 C.F.R. §§ 100.26,
17 109.21(c)(2)-(4); WWE Response at 16-17.

18 Further, available information does not suggest that the conduct prong could be satisfied
19 as to any of the "Stand Up for WWE" promotional materials, including those that qualified as
20 public communications as a result of being commercially broadcast or placed for a fee on
21 another website. WWE Response at 18-21. Specifically, WWE states that it created and
22 produced the videos without any request or suggestion, substantial discussion, or material

⁷ See <http://www.youtube.com/watch?v=h1YCVZknosE> (last accessed May 17, 2011); see also WWE Response, Exhibit L (Transcript).

1 involvement from Mrs. McMahon, her committee, or any of her agents. McMahon Affidavit at
2 ¶¶ 7-10. Further, WWE states that it did not employ any common vendor or individual who was
3 a salaried employee or independent contractor of the Linda McMahon campaign committee for
4 the 120 days prior to the production of the communications that comprised the "Stand Up for
5 WWE" campaign. *Id.* at ¶ 11. We have no contrary information.

6 2. "Make-A-Wish" communication

7 During October 2010, WWE broadcast a state-wide television communication that shows
8 several images of popular wrestlers who have devoted time to the Make-A-Wish Foundation, and
9 also includes a brief image of Mrs. McMahon "greeting a young boy in a wheelchair."⁸

10 Complaint at 2; WWE Response at 12-13; *see also* McMahon Affidavit at ¶ 29. The image of
11 Mrs. McMahon, who was not identified by name, is on the screen for approximately two seconds
12 of the 32-second advertisement. The commercially broadcast Make-A-Wish communication
13 appears to be the only WWE 2010 promotional advertisement that contains a likeness of Linda
14 McMahon. Complaint at 2; WWE Response at 12-13. WWE states that the Make-A-Wish
15 television advertisement was not part of its "Stand Up for WWE" campaign, but instead was part
16 of another promotional program ("WWE Promotional Ads") that had been approved weeks
17 before its decision to begin the "Stand Up for WWE" campaign.⁹ WWE Response at 12.
18 However, WWE states that the decision to air the "WWE Promotional Ads" was another
19 corporate relations decision made as a result of the media scrutiny surrounding Mrs. McMahon's
20 candidacy. *Id.*

⁸ *See also* <http://www.youtube.com/watch?v=S7fmdaZbP98> (last accessed on May 17, 2011).

⁹ WWE states that this promotional program not only included the Make-A-Wish advertisement, but also included an advertisement discussing the "Wrestlemania Reading Challenge" and an advertisement featuring female performers known collectively as the "WWE Divas" explaining why they enjoy working at WWE. *See* WWE Response, Exhibits I, J and Exhibit N, tracks 7-9.

1 Respondents deny that the Make-A-Wish advertisement refers to a clearly identified
2 federal candidate or constitutes a coordinated communication. Committee Response at 13, 16;
3 WWE Response at 17. Respondents assert that the very brief image of Mrs. McMahon, in her
4 capacity as WWE's former CEO, was taken from previously recorded WWE video footage and
5 did not mention either her name or her candidacy.¹⁰ WWE Response at 13, 17. Respondents do
6 not deny that the other requirements for the electioneering communication or candidate-reference
7 content prong standards would be satisfied regarding this advertisement.

8 It appears that the Make-A-Wish advertisement meets the content prong because it
9 satisfies the definition of an electioneering communication and clearly identifies a federal
10 candidate in a public communication that was publicly distributed and targeted to the relevant
11 electorate within 90 days of the general election.¹¹ 11 C.F.R. § 109.21(c)(1), (4). However, as
12 explained below, the communication does not satisfy the conduct prong.

13 The question as to whether the communication satisfies either 11 C.F.R. § 109.21(c)(1)
14 or (4) rests on whether the image of Mrs. McMahon in the advertisement is a reference to clearly
15 identified federal candidate, as both standards require such a reference. In the electioneering

¹⁰ In the alternative, the Committee argues for the retroactive application of the Commission's new safe harbor for commercial communications, which took effect on December 1, 2010. Committee Response at 17; see also *Final Rules and Explanation and Justification for Coordinated Communications*, 75 Fed. Reg. 55,947 (Sept. 15, 2010). The safe harbor excludes from the definition of a coordinated communication any public communication in which a federal candidate is clearly identified only in his or her capacity as the owner or operator of a business that existed prior to the candidacy, so long as the public communication does not promote, attack, support, or oppose ("PASO") that candidate or another candidate who seeks the same office, and so long as the communication is consistent with other public communications made by the business prior to the candidacy. 75 Fed. Reg. at 55,959; see also 11 C.F.R. § 109.21(i).

WWE's website contains numerous archived videos of similar types of communications distributed in the past involving its work with the Make-A-Wish Foundation. See <http://www.wwe.com>. WWE relies on these facts and argues that because the reference does not PASO Mrs. McMahon, it satisfies the safe harbor's requirements if it had been in effect at the time of the communication at issue. However, since the safe harbor was not in effect at the time of the advertisement, it is inapplicable to this matter.

¹¹ There is no information that the Make-A-Wish advertisement satisfies the other two content prong standards, 11 C.F.R. § 109.21(e)(2) and (3), as it does not contain express advocacy or republish the candidate's campaign materials.

1 communication regulations, the term "refers to a clearly identified candidate" is defined as "the
2 candidate's name, nickname, photograph, or drawing appears, or the identity of the candidate is
3 otherwise apparent through an unambiguous reference such as 'the President,' 'your
4 Congressman,' or 'the incumbent' or through an unambiguous reference to his or her status as a
5 candidate such as 'the Democratic Presidential nominee' or 'the Republican candidate for Senate
6 in the State of Georgia.'" 11 C.F.R. § 100.29(b)(2); *see also* 2 U.S.C. § 431(18) and 11 C.F.R.
7 § 100.17 (defining "clearly identified" in the same or similar terms). Here, the Make-A-Wish
8 advertisement contains a two-second image of Mrs. McMahon, so it refers to a clearly identified
9 federal candidate.

10 Both Respondents argue that under the rationale of Advisory Opinion 2004-31 (Darrow),
11 the Make-A-Wish communication does not contain a reference to a clearly identified federal
12 candidate, and thus, does not satisfy 11 C.F.R. § 109.21(c)(1). The Committee argues that the
13 incidental reference to Mrs. McMahon's likeness was intended to refer to Mrs. McMahon in her
14 former capacity as CEO of WWE, and in the context of WWE's longstanding relationship with
15 the Make-A-Wish Foundation.¹² Committee Response at 16. It maintains that the
16 communication does not mention Mrs. McMahon or her opponent's name, her federal candidacy,
17 or any other federal candidacy.

18 The facts considered by the Commission in reaching its conclusion that the
19 communications in the Darrow AO did not constitute electioneering communications are
20 different from the present facts in material ways. First, the candidate (Russ Darrow, Jr.) did not
21 speak or appear on screen for any of the advertisements. AO 2004-31 at 3. Second, another

¹² The Committee asserts that the Commission emphasized in Advisory Opinion 2004-31 (Darrow) that it is not precluded "from making a determination that the specific facts and circumstances of a particular case indicate that certain advertisements do not refer to a clearly identified federal candidate and, hence, do not constitute electioneering communications." Committee Response at 16; *see also* AO 2004-31 at 4.

1 individual (Russ Darrow III) speaks and appears in the advertisements.¹³ *Id.* at 3. Third, "Russ
2 Darrow" was part of the name of all the Russ Darrow Group Dealerships (RDG), and RDG had
3 worked for a decade to develop it as a brand name for all of its dealerships. *Id.* Finally, the
4 Commission concluded that, for the few advertisements that also included a single reference to
5 "Russ Darrow" rather than the full name of the dealership, these references, taken together with
6 the other references in the advertisement, also referred to the business entity and not to the
7 Candidate.¹⁴ *Id.* Based upon that reasoning, the Commission concluded that the advertisements
8 did not refer to a clearly identified federal candidate and thus were not electioneering
9 communications. *Id.*

10 Here, Linda McMahon, the Candidate, actually appears on the screen in the
11 advertisement. Second, unlike Darrow, Mrs. McMahon's name is not part of WWE's business
12 name and is not mentioned in the advertisement. We acknowledge that it could be argued that
13 Linda McMahon's name and likeness has become synonymous with WWE over her twenty-nine
14 year tenure as CEO, and, like the Darrow ads, the Make-A-Wish advertisement could be
15 construed as having a business purpose, *i.e.*, WWE promoting its goodwill in response to media
16 scrutiny. Nevertheless, we believe that the facts of Darrow are sufficiently and materially
17 different that the rationale of the AO is not applicable to this matter.

18 Accordingly, we conclude that the Make-A-Wish advertisement appears to constitute an
19 electioneering communication, and satisfies 11 C.F.R. § 109.21(c)(1) because it refers to Mrs.
20 McMahon, a clearly identified federal candidate, and was broadcast and targeted to the relevant
21 electorate within 60 days of the general election. Similarly, the advertisement satisfies 11 C.F.R.

¹³ Russ Darrow III, not the candidate, had been face of the company for over ten years. *Id.*

¹⁴ The Commission noted that, although the name "Russ Darrow" was used throughout the proposed advertisements, most of these references included the full name through which a particular dealership does business. *Id.*

1 § 109.21(c)(4) because it refers to a clearly identified Senate candidate, and there is no dispute
2 that the communication was publicly distributed within 90 days of the general election in the
3 candidate's jurisdiction.

4 Although the Make-A-Wish advertisement satisfies the content prong, it does not satisfy
5 any of the conduct prong standards. WWE argues that it wholly produced the corporate
6 responses without any request or suggestion, substantial discussion, or material involvement
7 from Mrs. McMahon, her committee, or any of her agents, and there is no available information
8 which contradicts this assertion. WWE Response at 18. As to the "material involvement"
9 standard, WWE contends the Commission has never found that coordination must occur as a
10 result of family relationships or business relationships between two parties. *Id.* at 19. There is
11 no available information to suggest that Mrs. McMahon, her committee, or agents shared the
12 required material information with WWE regarding its corporate promotional programs. The
13 last two standards of the conduct prong, common vendor and employee/independent contractor,
14 do not appear to be satisfied either. 11 C.F.R. §§ 109.21(d)(4) and (d)(5). WWE states that it
15 did not use common vendors nor did it employ any former employee or independent contractor
16 of the Committee for the duration of the production or distribution of its corporate response
17 campaign. *Id.* at 21.

18 Accordingly, we conclude that the Make-A-Wish communication does not satisfy the
19 conduct prong and therefore, it is not a coordinated communication under 11 C.F.R. § 109.21.
20 Because we conclude that the advertisement meets the definition of an electioneering
21 communication, we address potential reporting and disclaimer violations in Section III.B. below,
22 and recommend that the Commission dismiss these violations, as a matter of prosecutorial
23 discretion.

3. "Fan Appreciation Day" event

On September 30, 2010, WWE issued a news release announcing that it would hold its first ever "Fan Appreciation Day" in Hartford, Connecticut, on October 30, 2010, three days before the election. Complaint at 2. When questioned about the timing of the event, WWE responded that the event was being held to "thank our fans for the support and *putting up with everything that's been said about the company and sticking by us.*" *Id.* (emphasis in original). Complainant contends that the event is "little more than a thinly-veiled attempt to rally support for Linda McMahon's candidacy less than 72 hours before the polls open on Election Day." *Id.* at 3.

Available information indicates that Mrs. McMahon was not present at the event, it was not publicly broadcast, and there was no specific reference to her name, her opponent's name, or her candidacy.¹⁵ WWE Response, Exhibit M; Committee Response, Exhibit 3. Accordingly, it does not appear that this event would even constitute a public communication or an electioneering communication or that it would satisfy any of the other content prong standards.

As to the conduct prong, Mr. McMahon, in his sworn affidavit, states that he and his employees conceived the idea for the event and made decisions regarding the scripts, promotion, and production of the event without the involvement of anyone from the Committee. McMahon Affidavit at ¶¶ 12-15; *see also* Wilson Affidavit at ¶¶ 8-9. Mr. McMahon further states that there was no request or suggestion, material involvement, or substantial discussion on the part of the Committee or a former employee/independent contractor with respect to the "Fan Appreciation Day." McMahon Affidavit at ¶¶ 16-19. There is no available information to contradict these

¹⁵ A review of the transcript indicates that Mr. McMahon did encourage the attendees to vote on Election Day and to feel free to wear a WWE t-shirt. However, it appears that these were general comments made with no references to a particular candidate, namely, Linda McMahon, or the Senatorial election. *Id.*

1 assertions. Therefore, we conclude that neither the content nor the conduct prong is met with
2 respect to this event.

3 4. "Smackdown" episode taping

4 Complainant contends that WWE scheduled a taping of its "Smackdown" program in
5 "the heart of the heavily Democratic city of Bridgeport on election night, suggesting an intent to
6 suppress voter turnout in the area."¹⁶ Complaint at 4. WWE responds that it taped the episode
7 of one of its regular television shows to discharge its contractual obligations. McMahon
8 Affidavit at ¶¶ 20 and 23. It further states that the content of the show was "apolitical" and was
9 developed in the normal course of business by WWE employees who typically write and produce
10 the program. WWE Response at 11, 17, and McMahon Affidavit at ¶ 22.

11 The Committee Response denies that any public communication occurred in connection
12 with the taping session or that it contained any references to a federal candidate or express
13 advocacy. Committee Response at 9, 11, and 15. Available information indicates that the
14 "Smackdown" episode was recorded in front of a live audience in Bridgeport, Connecticut, on
15 election night, but was not broadcast until the Friday after the election, or November 5, 2010.¹⁷
16 *Id.* at 15. Therefore, it appears that the "Smackdown" taping would constitute a public
17 communication on the day that it was actually broadcast, but not on the day of taping (Election
18 Day) since there was no broadcast of the episode on that day. Further, there is no additional
19 information to suggest that the episode taping would satisfy any of the content or conduct prong
20 standards.

21

¹⁶ This Report will not discuss the "voter suppression" allegation raised in the complaint since it is beyond the Commission's jurisdiction.

¹⁷ See also <http://vids2.wwe.com/h50109928/friday-night-smackdown-fri-nov-5> (last accessed May 17, 2011).

1 **5. Conclusions**

2 Based on the foregoing, we conclude that the "Stand Up for WWE" promotional
3 activities and communications, the "Fan Appreciation Day," and the "Smackdown" Program
4 episode taping do not satisfy the content and conduct prongs of the coordination regulations. We
5 further conclude that, although the Make-A-Wish communication satisfies the content prong, it
6 does not satisfy the conduct prong. Finally, there is no available information to suggest that any
7 of the WWE promotional activities or communications would satisfy the general coordination
8 requirements pursuant to 11 C.F.R. § 109.20(b). Respondents have denied that any type of
9 coordination took place between the parties for any of WWE's promotional activities and
10 communications. Accordingly, we recommend that the Commission find no reason to believe
11 that World Wrestling Entertainment, Inc., Vince McMahon, Linda McMahon, and Linda
12 McMahon for Senate 2010 and Rob Jentgens, in his official capacity as treasurer, violated
13 2 U.S.C. § 441b(a) by making or accepting prohibited corporate in-kind contributions in the form
14 of coordinated expenditures.

15 **B. Electioneering Communication**

16 Based on our conclusion that the Make-A-Wish communication constitutes an
17 electioneering communication, we consider whether this communication is subject to the
18 disclosure and disclaimer requirements of the Act. See 2 U.S.C. §§ 434(f) and 441d. The Act
19 provides that all persons, including corporations, making electioneering communications that
20 cost, in the aggregate, more than \$10,000 during the calendar year, must comply with the
21 existing disclosure requirements for electioneering communications. 2 U.S.C. §§ 434(f)(1) and
22 (2). While we do not have specific information regarding the cost of the communication, it
23 would be reasonable to conclude that the cost of the communication exceeded \$10,000 since

1 WWE admits it aired the communication "throughout the month of October 2010." See
2 McMahon Affidavit at ¶ 29. Therefore, it appears that the Make-A-Wish communication is an
3 electioneering communication subject to the disclosure requirements. WWE failed to report the
4 Make-A-Wish communication as an electioneering communication and is, therefore, in violation
5 of 2 U.S.C. § 434(f).

6 Electioneering communications are also subject to disclaimer requirements. 2 U.S.C.
7 § 441d(a). For radio and television communications not authorized by a candidate or his
8 campaign committee, the disclaimer must identify who paid for the message, state that it was not
9 authorized by any candidate or candidate's committee, and list the permanent street address,
10 telephone number, or World Wide Web address of the person who paid for the communication.
11 2 U.S.C. § 441d(d)(2); 11 C.F.R. § 110.11(b)(3). In addition, the communication must include
12 an audio statement, conveyed by an unobscured full-screen view of the person making the
13 statement, informing the listener of the person responsible for the content of the communication.
14 11 C.F.R. § 110.11(c)(4)(i)-(ii). Further, the contents of the audio statement must also appear in
15 clearly readable writing at the end of the communication. 11 C.F.R. § 110.11(c)(4)(iii). While
16 the advertisement contains WWE's logo and mentions WWE and its relationship with the Make-
17 A-Wish Foundation, we conclude that it does not comply with the specific disclaimer
18 requirements for communications not authorized by a candidate or candidate's committee.¹⁸
19 Accordingly, WWE has violated 2 U.S.C. § 441d with respect to its Make-A-Wish electioneering
20 communication.

21 Despite the foregoing conclusions, the fact remains that Mrs. McMahon's image
22 represents a very small portion (2 seconds) of the overall communication. Accordingly, we
23 recommend that the Commission dismiss, as a matter of prosecutorial discretion, WWE's

¹⁸ See <http://www.youtube.com/watch?v=S7fmdsZbP98> (last accessed on May 17, 2011).

violations of 2 U.S.C. §§ 434(f) and 441d relating to its failure to disclose or include a disclaimer on its Make-A-Wish electioneering communication. *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

IV. RECOMMENDATIONS

1. Find no reason to believe that World Wrestling Entertainment, Inc., Vince McMahon, Linda McMahon, and Linda McMahon for Senate 2010 and Rob Jentgens, in his official capacity as treasurer, violated 2 U.S.C. § 441b(a) by making or accepting prohibited corporate in-kind contributions in the form of coordinated expenditures.
2. Dismiss, as a matter of prosecutorial discretion, violations by World Wrestling Entertainment, Inc. of 2 U.S.C. §§ 434(f) and 441d relating to its failure to disclose or include a disclaimer on its Make-A-Wish electioneering communication.
3. Approve the attached Factual and Legal Analyses.
4. Approve the appropriate letters.

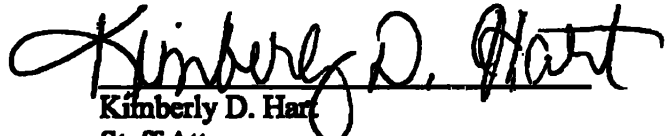
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5/24/11
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